

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JOAN FAULK OWENS and
KAREN LYNN HUBBARD,**

Plaintiffs,

v.

**STATE OF ALABAMA DEPT. OF
MENTAL HEALTH AND MENTAL
RETARDATION, *et al.*,**

Defendants.

2:07-cv-650

DEFENDANTS' INITIAL DISCLOSURES

Defendants, the State of Alabama Department of Mental Health and Mental Health Retardation (hereinafter "ADMH/MR"), John Houston, Otha Dillihay, Henry Ervin and Marilyn Benson jointly file these Initial Disclosures in accordance with Federal Rule Civil Procedure 26(a)(1). The Defendants reserve the right to supplement this disclosure if supplementation is appropriate, and, at the proper time, to submit their Witness and Exhibit Lists for trial, which may include additional witnesses, documents, and things in view of the fact that discovery has not yet begun and the full extent and substance of the Plaintiffs' testimony and arguments are unknown to these Defendants at this time.

I. Individuals Believed to Have Discoverable Information Relevant to Disputed Fact:

- a. Plaintiff, Joan Faulk Owens
- b. Plaintiff, Karen Lynn Hubbard
- c. Defendant, John Houston

- d. Defendant, Otha Dillihay
- e. Defendant, Henry Ervin
- f. Defendant, Marilyn Benson
- g. June Lynn

Ms. Lynn is Executive Assistance to the Associate Commissioner for Administration, David Bennett. At relevant time periods to this litigation, Ms. Lynn was the Executive Assistant to the Associate Commissioner of Administration Otha Dillihay. Also, she was at one time acting Associate Commissioner for Administration of the ADMH/MR. Ms. Lynn is an attorney and her role at ADMH/MR includes rendering legal advice to the Associate Commissioner of Administration and others. Therefore, some of Ms. Lynn's knowledge may fall within the scope of various privileges, including, without limitation, the attorney client and work product privileges and potentially others. These privileges are not waived by listing Ms. Lynn as a potential witness herein but to the contrary, these privileges are specifically reserved.

- h. David Bennett.

Mr. Bennett is the Associate Commission for Administration of the Alabama Department of Mental Health and Mental Retardation. Mr. Bennett was a member of the interview committee that evaluated and interviewed candidates for the position of ADMH/MR Assistant Personnel Director.

- i. Paul Bisbee

Mr. Bisbee is a member of the Job Evaluation Committee for the ADMH/MR.

- j. Susan Chambers

Ms. Chambers is a member of the Job Evaluation Committee for the ADMH/MR. Ms. Chambers was also Facilities Director for Greil Memorial Psychiatric Hospital.

- k. Charles Day

Mr. Day is a member of the Job Evaluation Committee for the ADMH/MR.

- l. Jackie Graham

Ms. Graham is the Deputy Director of the State Personnel Department.

m. Kent Hunt

Mr. Hunt is the Associate Commissioner of the ADMH/MR Substance Abuse Division. Mr. Hunt is a member of the ADMH/MR Job Evaluation Committee and was also a member of the interview committee that evaluated and interviewed candidates for the position of ADMH/MR Assistant Personnel Director.

n. Judith Johnston

Ms. Johnston is a member of the Job Evaluation Committee.

o. Doug Lunsford

Mr. Lunsford was a member of the interview committee that evaluated and interviewed candidates for the position of of ADMH/MR Assistant Personnel Director. Mr. Lunsford is the Manager of Special Projects for the State Personnel Department.

p. Mike Mathis

Mr. Mathis is the Personnel Director for the Partlow Center in Tuscaloosa, Alabama which is a facility of the ADMH/MR. Mr. Mathis was responsible for advertising the position of Assistant Personnel Manager and responsible for evaluating applications.

q. Eranell McIntosh-Wilson

Ms. Wilson is the Associate Commissioner of the Division of Mental Retardation of the ADMH/MR. She is also a member of the Job Evaluation Committee at ADMH and was a member of the interview committee that evaluated and interviewed candidates for the position of of ADMH/MR Assistant Personnel Director.

II. Document, Electronically Stored Information, and Tangible Things

- a. Documents reflecting qualifications and personnel information of Marilyn Benson, Henry Ervin, Joan Owens and Karen Lynn Hubbard.
- b. Documents regarding and relating to creation and approval of Assistant Personnel Director position.
- c. Announcements and advertisements issued for Assistant Personnel Director position.
- d. Applications received for Assistant Personnel Director position.

- e. Certain State Personnel rules, regulations, policies and procedures, and certain job specifications.
- f. Documents reflecting State Personnel Department policies and procedures regarding creation of new exempt state employee position.
- g. Specifications and descriptions of administrative and/or management positions at ADMH/MR.
- h. Minutes of the Job Evaluation Committee Related to creation of Assistant Personnel Director and issue of substitution of experience for education.
- i. Specification and description of job duties for Assistant Personnel Director.
- j. Proposal to Conduct a Wage and Classification Study
- k. Application evaluations of all applicants for Assistant Personnel Director position.
- l. Interview assessments of applicants who were interviewed for Assistant Personnel Director position.
- m. Various applicable policies and procedures regarding personnel and other issues that are potentially relevant to this case including without limitation exempt personnel and merit personnel.
- n. Various applicable rules and regulations regarding exempt personnel and merit personnel.
- o. The statutory authorization for exempt personnel within the ADMH/MR.
- p. Various materials submitted to the EEOC regarding the charges made by the Plaintiffs.
- q. The determination by the EEOC that no cause existed regarding the Plaintiffs' charges.
- r. Certain job specifications.
- s. Certain communications between certain ADMH/MR employees regarding the creation of the Assistant Personnel Director position, the specifications regarding same and approvals regarding same.

- t. Certain new and old management level specifications or changed specifications for management level positions.

These Defendants reserve the right to supplement these disclosures. The documents referenced above may be viewed and copied in the offices of defense counsel. At this point in time no electronically stored information has been found that is additional to the documents referenced above. A litigation hold has been announced to relevant employees of ADMH/MR and counsel has met with other relevant state employees who work with computers and computer information. If any relevant ESI is located it will immediately be printed and provided to Plaintiffs' counsel. Counsel for Plaintiffs is requested to instruct Plaintiffs, in addition to the ADMH/MR instructions, not to delete or dispose of any ESI that may exist on any computer or other storage device owned or used by them at any location.

III. Computation of Damages by the Disclosing Party

Not applicable.

IV. Insurance Agreements

The individual Defendants are, unless coverage issues arise, covered by the Alabama Risk Management Liability Trust Fund. It is unclear to Defendants at this time whether this consists of an actual insurance policy or not. Further, these Defendants are not certain of the amount of coverage but are checking these issues and will advise Plaintiffs' counsel no later than November 1, 2007 as to the updated information Obtained. The trust fund issued reservation of rights letters to the individual Defendants. The "policy" is not readily available to these Defendants but is being obtained.

Respectfully submitted on this the 31st day of October, 2007.

/s/ H.E. Nix, Jr.

H.E.Nix, Jr. (ASB-6988-X54H)

Brandy F. Price (ASB-4691-A63P)

Counsel for the Defendants

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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing instrument has been served (a) through the Court's e-filing system; (b) by placing a copy of same in the United States Mail, postage prepaid and properly addressed; and/or (c) by personal/firm e-mail to

J. Flynn Mozingo <i>Melton, Espy & Williams, P.C.</i> P. O. Drawer 5130 Montgomery, AL 36103-5130	Courtney W. Tarver, Esq. Deputy Atty. General and Gen. Counsel Bureau of Legal Services Dept. of Mental Health and Mental Retardation RSA Union Building 100 N. Union Street Montgomery, AL 36130-1410
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on this the 31st day of October, 2007.

/s/H. E. Nix, Jr.
OF COUNSEL